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Attorney for Defendant Lou Arias dba Lou's Automotive Repair

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES, Plaintiff, Vs. LOU ARIAS dba LOU'S AUTOMOTIVE REPAIR, PARADISE CREEK HOLDING CORPORATION and DOES 1 through 10, inclusive, Defendants.	CASE NO. 08 CV 0657 DMS (AJB) **ANSWER OF DEFENDANT LOU ARIAS DBA LOU'S AUTOMOTIVE REPAIR TO CIVIL COMPLAINT**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Defendant Lou Arias dba Lou's Automotive Repair, separating himself from his co-defendants, answers the complaint for himself alone as follows:

I.

JURISDICTION

1. This defendant admits the allegations contained in Paragraph 1.

2. This defendant admits the allegations contained in Paragraph 2.

3. Answering Paragraph 3, this defendant denies that plaintiff was denied equal access to defendant's facilities, goods, and/or services in violation of both federal and state laws and/or

was injured due to violations of federal and state access laws. Except as so denied, this defendant admits the remaining allegations contained in Paragraph 3.

II.

PARTIES

4. Answering Paragraph 4 this defendant denies that he was or is the owner or lessor of the subject property, and denies that it is or was a public accommodation. Except as so denied this defendant admits the remaining allegations contained in said paragraph.

5. Answering Paragraph 5 this defendant lacks sufficient information and belief to admit or deny the allegations in Paragraph 5, and therefore denies each and every allegation contained therein.

6. This defendant denies the allegations contained in Paragraph 6.

7. This defendant denies the allegations contained in Paragraph 7.

8. This defendant denies the allegations contained in Paragraph 8.

III.

FACTS

9. This defendant lacks sufficient information and belief to admit or deny the allegations in Paragraph 9, and therefore denies each and every allegation contained therein.

10. Answering Paragraph 10 this defendant denies the existence of either architectural barriers or discriminatory policies and practices regarding accommodating people with disabilities. This defendant denies each and every other remaining allegation contained in Paragraph 10.

11. Answering Paragraph 11 this defendant denies the existence of architectural barriers. This defendant denies each and every other remaining allegation contained in Paragraph 11.

12. Answering Paragraph 12 this defendant lacks sufficient information and belief to admit or deny whether plaintiff is an otherwise qualified individual and therefore denies said allegation. This defendant further denies each and every other allegation contained in said

paragraph.

13. Answering Paragraph 13 this defendant denies that he operates a public accommodation, denies the existence of architectural barriers and denies the remaining allegations contained in Paragraph 13.

14. This defendant denies the allegations contained in Paragraph 14, and denies that plaintiff has suffered money damages.

15. Answering Paragraph 15, this defendant denies that architectural barriers exist and denies each and every remaining allegation contained therein.

IV.

ANSWER TO FIRST CLAIM FOR VIOLATION OF AMERICANS WITH DISABILITIES ACT 42 USC § 12101, et seq.

16. This defendant incorporates his responses to Paragraphs 1-15, inclusive, above.

17. This defendant denies the allegations contained in Paragraph 17.

18. Answering Paragraph 18, this defendant denies that plaintiff has been, is being or will be subjected to discrimination, and denies that plaintiff is entitled to the remedies sought.

V.

ANSWER TO SECOND CLAIM FOR VIOLATION OF CALIFORNIA CIVIL CODE

19. This defendant incorporates his responses to Paragraphs 1-18, inclusive, above.

20. This defendant denies the allegations contained in Paragraph 20.

21. This defendant denies the allegations contained in Paragraph 21, and denies that plaintiff has suffered any damages.

22. This defendant denies the allegations contained in Paragraph 22, and denies that plaintiff has suffered any damages.

23. Answering Paragraph 23, this defendant denies that plaintiff is entitled to the remedies sought.

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VI.

ANSWER TO THIRD CLAIM FOR VIOLATION OF HEALTH AND SAFETY CODE § 19950, et seq.

24. This defendant incorporates his responses to Paragraphs 1-13, inclusive, above.

25. This defendant denies the allegations contained in Paragraph 20.

26. Answering Paragraph 26 this defendant denies that he has failed to fulfill any duty to provide full and equal access to his facilities by people with disabilities and denies the remaining allegations.

27. This defendant denies the allegations contained in Paragraph 27, denies that plaintiff has suffered any damages, and denies that plaintiff is entitled to the remedies sought.

VII.

ANSWER TO FOURTH CLAIM FOR DECLARATORY RELIEF

28. This defendant incorporates his responses to Paragraphs 1-27, inclusive, above.

29. This defendant denies the allegations contained in Paragraph 29.

30. This defendant denies the allegations contained in Paragraph 30.

VIII.

ANSWER TO FIFTH CLAIM FOR INJUNCTIVE RELIEF

31. This defendant incorporates his responses to Paragraphs 1-30, inclusive, above.

32. This defendant denies the allegations contained in Paragraph 32, and denies that plaintiff is entitled to a remedy at law.

33. Answering Paragraph 33, this defendant denies that plaintiff is entitled to the remedies sought.

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XI.

JURY DEMAND

34. This defendant requests a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

X.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Uncertainty)

1. The complaint is so vague, ambiguous, incomplete, unintelligible and uncertain so as to be subject to dismissal on the grounds of uncertainty.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

2. The complaint is barred by the doctrine of estoppel by reason of plaintiff's own acts, omissions, representations and courses of action upon which defendant relied to his prejudice and detriment.

THIRD AFFIRMATIVE DEFENSE

(Failure to State Claim Upon Which Relief Can Be Granted)

3. The complaint fails to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

4. The complaint is barred by the applicable statute of limitations.

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FIFTH AFFIRMATIVE DEFENSE

(Laches)

5. The complaint herein is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Not Damaged)

6. The plaintiff, in connection with any of the transactions or allegations that are the subject of this complaint, has not suffered any damages by reason of the alleged acts or omissions of this defendant, and plaintiff has no valid claims against this defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

7. The damages if any sustained by plaintiff were the result of plaintiff's failure to exercise reasonable efforts to mitigate his damages.

EIGHTH AFFIRMATIVE DEFENSE

(Doctrine of Waiver)

8. The complaint is barred by the doctrine of waiver in that plaintiff has knowingly and voluntarily waived all of his causes of action against this defendant.

NINTH AFFIRMATIVE DEFENSE

(Ratification)

9. Plaintiff ratified the actions of this defendant alleged in the complaint and has waived or is estopped from prosecuting his claims by virtue of plaintiff's conduct and by reason of plaintiff's own acts, omissions, representations and courses of action.

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TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

10. Plaintiff has not come to court with clean hands. As a result, plaintiff is not entitled to the relief requested in the complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

11. Plaintiff had knowledge of the risks and hazards involved in the activity leading to plaintiff's alleged damages, voluntarily engaged therein, and assumed the risks and hazards thereof, and that said assumption of the risks and hazards bars plaintiff's right to recovery from this defendant.

TWELFTH AFFIRMATIVE DEFENSE

(Fraud and Bad Faith)

12. Plaintiff never attempted to gain access to this defendant's business and has engaged in a pattern of targeting small business without any intent of engaging in commerce with said business. Plaintiff's sole purpose in claiming that he was denied access is forth the purpose of demanding compensation from this defendant. Plaintiff's claims should accordingly be denied.

THIRTEENTH AFFIRMATIVE DEFENSE

(Doctrine of Waiver)

13. The complaint is barred by the doctrine of waiver in that plaintiff has knowingly and voluntarily waived all of its causes of action against this defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Standing)

14. Plaintiff has no standing to maintain the causes of action in the complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Consent)

15. The facts alleged in the complaint, if true, were consented to, accepted, ratified and confirmed by plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorneys' Fees)

16. This defendant alleges that plaintiff is not entitled to attorney's fees by contract, law or statute.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Acts of Other Parties)

17. Defendant alleges that any damages sustained by plaintiff herein were the result of actions taken solely by his co-defendants herein.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Exemption)

18. This defendant is exempt from the laws cited by plaintiff in support of his claims because the building occupied by the defendant's business was constructed prior to the enactment of said laws, has not been altered or remodeled since that time and is therefore exempt from any obligation to comply with said laws.

NINETEENTH AFFIRMATIVE DEFENSE

(Preemption)

19. The construction and condition of the subject property has been inspected and approved by the City of National City and the County of San Diego and found to be in compliance with all laws. The actions of and regulation by said local governments preempts

plaintiff’s claims.

TWENTIETH AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Defenses)

20. This defendant reserves the right to assert all defenses, including affirmative defenses, which may be disclosed or become relevant to the complaint once the precise nature of plaintiff's claim is ascertained through discovery.

XI.

PRAYER

WHEREFORE, it is prayed that:

A. The Court dismiss plaintiff’s complaint with prejudice;

B. The Court deny plaintiff all relief sought by the complaint;

C. This Court award this defendant reasonable attorney fees;

D. The Court award this defendant his costs of suit; and

E. The Court award such other and further relief as the Court deems just and proper.

Dated: May 9, 2008

LAW OFFICE OF FRANK S. CLOWNEY III

/s/

FRANK S. CLOWNEY III
Attorney for Defendant Lou Arias dba Lou’s Automotive Repair